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**IN THE
Supreme Court of the United States**

October Term, 1977

NO. 77-1242

PLEASANT RICHARD TALLY

(a/k/a/ DICK TALLY),

Petitioner,

versus

WILLIAM P. JOHNSON, et al.,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**BRIEF FOR
RESPONDENT JUDGE H. LAMAR KNIGHT
IN OPPOSITION**

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OPINIONS BELOW

The opinions of the United States District Court for the Northern District of Georgia which granted Respondent's Motion to Dismiss and denied Petitioner's Motion to Alter or Amend Judgment are reproduced as Appendix C and D of Petition.

The decisions of the Court of Appeals for the Fifth Circuit in affirming (without comment) and denying Petitioner's Petition for Rehearing are reproduced as Appendix A and B of Petition.

JURISDICTION

While this Court has jurisdiction pursuant to 42 U.S.C. §1254(1), Petitioner's assertion that jurisdiction exists by virtue of Rule 19.1(b) of the Rules of this Court is incorrect.

STATUTE INVOLVED

42 U.S.C. §1983 is set forth in the Petition at page 21.

QUESTION PRESENTED

Respondent Judge Knight does not believe the Petitioner has properly stated the questions presented. In the opinion of this Respondent, the question presented is:

Is a Superior Court Judge, who has jurisdiction to hear divorce actions, entitled to judicial immunity in a 42 U.S.C. §1983 action which is brought by an ex-husband complaining of an Order entered by the Judge in 1969 in his divorce action wherein the Judge had allegedly improperly directed the transfer of ownership of corporate stock from the husband to the wife as part of an award of temporary alimony.

STATEMENT

The Petitioner's "Statement of the Case" in his Petition is extremely confusing and argumentative. Consequently, Respondent Judge Lamar Knight (hereinafter Judge Knight) seeks the Court's indulgence in a restatement of the case as it applies to him.

Judge Knight is and has been for all times relevant to this action, a Judge of the Superior Court of Coweta Judicial Circuit of Georgia, which includes Carroll County, Georgia.

In August, 1969, Petitioner's then wife brought a divorce action against the Petitioner which was heard by Judge Knight in the Carroll County Superior Court. In September, 1969, after a hearing for an interlocutory divorce decree, Judge Knight entered an Order awarding temporary alimony to the Petitioner's wife which, according to Petitioner's complaint, transferred possession and control of a corporation (Style Crest) to the Petitioner's wife. Further, according to the complaint, the Judge "verbally restrained" the Petitioner from entering the premises of the corporation (Petition, pp. 8a-10a).

Petitioner alleges these actions violated his constitutional due process and property rights. Petitioner further alleges that Judge Knight did not have jurisdictional authority to transfer "possession and control" of the corporation to the Petitioner's wife; and therefore, his action was "null and void" and "completely stripped the defendant, Judge H. Lamar Knight of any judicial immunity." (Petition, pp. 10a-11a).

Judge Knight filed a Motion to Dismiss this action for failure to state a claim upon which relief could be granted in that his actions were protected by judicial immunity and that the statute of limitations had expired (Petition, pp. 16a-25a). In an Order granting Judge Knight's Motion to Dismiss on the basis of judicial immunity (as well as motions to dismiss defendants William P. Johnson and Aubrey W. Gilbert) the District Court stated:

"Despite plaintiff's claims to the contrary, it is clear that Judge Knight had jurisdiction over the divorce proceedings in question and was empowered to make a disposition of plaintiff's share holdings in Style Crest under Ga. Code Ann. §30-203. De-

fendant Knight is therefore immune to suit under section 1983. *Pierson v. Ray*, 386 U.S. 547 (1967); *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335 (1871); *Williams v. Sepe*, 487 F.2d 913 (5th Cir. 1973)." (Petition, p. 5a).

Petitioner then moved "To Alter or Amend a Judgment" and simultaneously filed his Notice of Appeal to the Fifth Circuit Court of Appeals. The District Court denied the Motion, stating:

"The plaintiff's remedy, assuming error on the part of Judge Knight, was an appeal of the order, not a civil rights action against the judge." citing *Pierson v. Ray*, *supra*. (Petition, p. 7a).

The Fifth Circuit Court of Appeals affirmed without opinion and denied a petition for hearing.

ARGUMENT

I. THERE IS NO CONFLICT OF DECISIONS.

Despite Petitioner's protestations to the contrary, there is no issue of "national significance" presented in this case, nor is the decision of the Fifth Circuit in conflict with prior decisions of this Court or any other Circuit Court of Appeals, including this Court in *Sparkman v. Stump*, No. 76-1750.

As will be pointed out *infra*, in the case at bar there is no question but that Judge Knight had both subject matter and personal jurisdiction over the divorce action and the Petitioner and his ex-wife in their 1969 divorce litigation. The claim of the Petitioner, in fact, is not that the Court was totally without jurisdiction, but that once having acquired jurisdiction, the Superior Court issued an Order which Petitioner claims exceeded the authority of the Judge in granting a remedy to the ex-wife.

The only "conflict between circuits" which Petitioner raises in his Petition are the Sixth Circuit cases on page 6. Two of these decisions were in favor of the "judge" which supported the doctrine of judicial immunity along the same traditional reasons as did the Fifth Circuit and the District Court in the case at bar. *Lynch v. Johnson*, 420 F.2d 818 (6th Cir. 1970); *Azar v. Conley*, 456 F.2d 1382 (6th Cir. 1972). In *Lucarell v. McNair*, 453 F.2d 836 (6th Cir. 1972), the Sixth Circuit held judicial immunity was not an absolute defense when there was a clear absence of jurisdiction. The Fifth Circuit has never disagreed with any of these decisions.

II. THE DECISION BELOW IS CLEARLY CORRECT.

The gist of Petitioner's allegations against Respondent Judge Knight is that while the Judge was hearing Petitioner's divorce action in the Carroll County Superior Court in 1969, the Judge ordered the transfer of Style Crest Corporation from the Petitioner to his then wife as part of temporary alimony.

Petitioner argues that Judge Knight did not have the authority to perform this act; therefore, he acted outside his jurisdiction and is not protected by judicial immunity.

Taking the allegations of the pleadings (Petition, pp. 8a-15a) at their face value for purposes of a ruling on a Rule 12(b)(6) Motion to Dismiss, the allegations show at best that Judge Knight might have exceeded his jurisdiction in making an improper award of property under Georgia's Temporary Alimony statute.¹ (Ga. Code Ann. §30-202).

¹ The only allegation in the complaint alleging improper action of Judge Knight is in paragraph 5 (Petition, pp. 9a-11a).

As will be shown, Petitioner misperceives the application of the judicial immunity principles to this situation, which is practically "on all fours" with the situation in the landmark case of *Bradley v. Fisher*, 13 Wall. (U.S.) 335, 20 L.Ed. 646 (1871), in which this Court laid out the basic rules concerning judicial immunity.

In *Bradley*, the Court held that a Judge may not be held personally liable for his judicial actions while acting upon matters within the scope of his jurisdiction, regardless of whether he exceeds that jurisdiction, and regardless of his personal intent, the damage suffered by a litigant appearing before him, or how erroneous his judgment may be. This immunity is complete and absolute. *Bradley v. Fisher*, 13 Wall. (U.S.) 335, 20 L.Ed. (1871). This doctrine of judicial immunity is applicable to civil rights actions brought pursuant to 42 U.S.C. §1983. *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed. 2d 288 (1967).

As this Court said in *Pierson v. Ray*, *supra*:

"It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that allow the most intense feelings in the litigants. *His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption.* Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation." 386 U.S. 547, 554 [Emphasis added].

The case *sub judice* is a typical example of the evil with which this Court expressed its concern in both *Bradley*, *supra*, and *Pierson*, *supra*. The Petitioner in this case is unhappy with the results of the divorce litigation which took place some eight (8) years ago. How does he react? He brings suit against his own attorney, his ex-spouse's

attorney, and the Judge who heard the case. The judicial process would quickly break down if a judge could not act in a forthright fearless manner in making his judicial decisions.

It is a well settled rule of law in this country that as long as a judge has jurisdiction over the person appearing before him and over the subject matter of the case then pending, he is entitled to absolute immunity concerning his decisions notwithstanding the fact that a particular act, decision, outcome, or criminal penalty, might exceed his jurisdiction. *Randall v. Brigham*, 7 Wall. (U.S.) 523, 19 L.Ed. 285 (1869); *Collins v. Moore*, 441 F.2d 550 (5th Cir. 1971).

As the Fifth Circuit said in *Williams v. Sepe*:

"... the test for the abrogation of judicial immunity is whether there is a *clear* absence of all jurisdiction over the subject matter (citing *Bradley v. Fisher*, *supra*). The policy underlying the doctrine requires that its application not depend upon the determination of 'nice questions of jurisdiction.' " 487 F.2d 913, 914 (5th Cir. 1973) [Emphasis in original].

With the background in mind, a careful review of the allegations in the Petitioner's complaint, as they relate to Judge Knight, fails to disclose any allegations which should cause this Court to pause for even a moment before denying the Petition. As was pointed out above, the only portion in the complaint which could conceivably give rise to any cause of action against Judge Knight is paragraph 5. In that paragraph the Petitioner states that Judge Knight conducted a hearing concerning an interlocutory decree in a divorce proceeding. There is no question but that a superior court judge in Georgia in 1969 had jurisdiction to adjudicate divorce actions.

Georgia Constitution of 1945, Art. VI, Sec. IV, Par. I (Ga. Code Ann. §2-3901). The statutes applying that constitutional jurisdiction clearly grant the Superior Court the authority to issue an Order granting such temporary alimony as the condition of the husband and the facts of the case may justify. Ga. Code Ann. §30-202. The statute further authorizes the judge to consider the peculiar necessities of the wife and make appropriate disposition of property. Ga. Code Ann. §30-203. Thus, there is absolutely no question but that Judge Knight had jurisdiction over the divorce action in the Superior Court of Carroll County and had the authority to grant temporary disposition of the property pending the final decree of divorce.

The gravamen of Petitioner's allegations against Judge Knight evolve around the allegation that the Judge caused the transfer of possession and control of a corporation owned primarily by the Petitioner and his spouse to the spouse in the Order following the September 16, 1969, hearing. If that is the case, and even assuming *arguendo* that such an Order went beyond the scope of the Superior Court's jurisdiction (which Judge Knight vigorously denies), it was at most a situation where a judge exceeded his jurisdiction rather than a situation where the conduct of the proceeding was wholly beyond the jurisdiction of the Court. Such a situation requires the application of judicial immunity. *Bradley v. Fisher, supra*; *Collins v. Moore, supra*.

In the Order denying Petitioner's Motion to Alter or Amend Judgment, the District Court properly pointed out that the Petitioner's remedy was an appeal of the Order in the divorce case, not a civil rights action against the Judge (Petition, p. 7a).

A review of the Georgia case citations support that conclusion of the District Court and point out that such errors are in fact reviewable by the Georgia Supreme Court on appeal. *E.g., Hood v. Hood*, 130 Ga. 610 (1908), (lack of jurisdiction of the husband because of improper service); *Lloyd v. Lloyd*, 183 Ga. 751 (1937), (the Court properly awarded use of home to wife as temporary alimony); *Coweta Bonding Co. v. Carter*, 230 Ga. 585 (1973), (order issued by Superior Court without proper notice to parties reversed on appeal); *In re Prisoners Awaiting Transfer*, 236 Ga. 516 (1976), (Superior Court improperly directing transfer of prisoners reversed on appeal).

Respondent concedes that judges sometimes err and are subject to being reversed on appeal. *However, the method of correction of error is by appeal, not by a civil rights action against the erring judge.*

The Georgia Divorce Law authorized Judge Knight to grant Petitioner's wife temporary alimony from the husband's estate (Ga. Code Ann. §30-202). Acting pursuant to that authority, Judge Knight ordered Petitioner to transfer his shares of Style Crest Corporation to his wife. The Georgia Law also provides that the Court may enforce its orders by contempt proceedings. Ga. Code Ann. §30-204, §24-105 and §24-2615.

Consequently, since Judge Knight had ordered Petitioner to transfer his shares of Style Crest to his wife, the Judge certainly had the authority to direct the Petitioner not to take any actions which would interfere with the wife's use of the property, *Gaston v. Shunk Plow Co.*, 161 Ga. 287, 130 S.E. 580 (1925).

CONCLUSION

Petitioner's allegations against Respondent Judge Knight, treated as true for purposes of ruling on a Motion to Dismiss, show that Judge Knight had jurisdiction to hear Petitioner's divorce action. While judicial error committed during that action could have been corrected by appeal, the Judge committing such error (if it in fact occurred) is protected by judicial immunity. The decision of the District Court dismissing this action was correct, and the Petition should be denied.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, DON A. LANGHAM, First Assistant Attorney General for the State of Georgia, do hereby certify that I have this day served the within and foregoing "Brief for Respondent Judge H. Lamar Knight in Opposition" upon Petitioner, prior to filing the same, by depositing a copy thereof, in the United States mail, postage prepaid, properly addressed to Petitioner's co-counsel of record, to wit:

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and in like fashion, I have served a copy of the same, upon co-Respondent's counsel of record, to wit:

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This _____ day of April, 1978.

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